

✓ BKK

PUBLIC UTILITIES  
COMMISSION

2005 MAY 12 A 10:59

FILED

May 11, 2005

The Honorable Public Utilities Commission  
of the State of Hawaii  
Kekuanao'a Building, First Floor  
465 South King Street  
Honolulu, Hawaii 96813

Re: Meetings with ICF Consulting in Docket No. 05-0002

To the Honorable Public Utilities Commission of the State of Hawaii:

On January 4, 2005, the Public Utilities Commission of the State of Hawaii ("Commission") instituted an investigation in Docket No. 05-0002 ("Docket") to examine the issues and requirements raised by, and contained in, Hawaii Revised Statutes Chapter 486H, as amended. In light of the nature and scope of this investigation and to assist in the development of a sound record in this proceeding, the Commission made the two Hawaii refiners (Tesoro Hawaii Corporation ("Tesoro") and Chevron U.S.A. Inc. ("Chevron"), and the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate") parties to this proceeding. The Commission also retained professional consultants, ICF Associates, LLC, a consulting member company to ICF Consulting ("ICF"), to assist the Commission in its investigation in this matter. The Commission also stated that any "individual, entity, organization desiring to intervene as a party or to participate without intervention in this proceeding shall file a motion to intervene or participate without intervention not later than twenty (20) days from the filing of this order". Order No. 21525 at 6. On January 24, 2005, the period to file a motion to intervene or participate in this Docket expired. As of that time, only Shell Oil Company ("Shell") and Hawaii Petroleum Marketers Association ("HPMA") filed motions to intervene, which motions were granted by the Commission (the Consumer Advocate, Shell, HPMA, Tesoro, and Chevron collectively referred to as the "Parties" and individually as "Party").

On April 15, 2005, ICF issued its report entitled "Implementation Recommendations for Hawaii Revised Statutes Chapter 486H, Gasoline Price Cap Legislation" (the "Report"). As part of this Docket, the Parties are scheduled to have a technical meeting with ICF to discuss the Report. The purpose of this meeting is to facilitate subsequent procedural steps including the issuance of information requests to ICF and the formation of the Parties' respective positions. The Parties, however, are concerned that a joint meeting involving all of the Parties and ICF may encroach upon, or at least have the appearance and perception of impinging upon, antitrust matters, Sarbanes-Oxley compliance matters, confidentiality matters, as well as other areas proprietary concerns. Thus, the Parties have agreed on the following recommendations that would substantially alleviate the Parties' concerns:

1. The Parties suggest that the meeting with ICF be structured such that ICF will meet individually and separately with each Party and the Consumer Advocate.

Each individual party meeting would be for a maximum of four hours each (including breaks). A Party shall be permitted to have, in its reasonable discretion, those persons it desires to participate on its behalf at such Party's individual meeting. The following is the proposed schedule of the individual meetings with ICF and the Party asking questions ("Individual Meetings"):

- a. Wednesday, May 18, 2005 (from 1:00 p.m. to 5:00 p.m.) – the Consumer Advocate and ICF
  - b. Thursday, May 19, 2005 (from 8:00 a.m. to 12:00 noon) – HPMa and ICF
  - c. Thursday, May 19, 2005 (from 1:00 p.m. to 5:00 p.m.) – Chevron and ICF
  - d. Friday, May 20, 2005 (from 8:00 a.m. to 12:00 noon) – Tesoro and ICF
  - e. Friday, May 20, 2005 (from 1:00 p.m. to 5:00 p.m.) – Shell and ICF
2. The Parties agree that the first Individual Meeting between the Consumer Advocate and ICF will be attended by only the Consumer Advocate, ICF and Commission Staff. The other four Individual Meetings will be attended only by the Party designated to meet at the time specified in paragraph 1. above, ICF, the Consumer Advocate, and the Commission Staff.
  3. The Parties agree that a Party may allow participation by a Party's representative(s) by telephone conference in to such Party's Individual Meeting with ICF. In order to conduct these Individual Meetings in an orderly fashion, the Party at such Individual Meeting shall follow the Commission Staff's guidance in the manner of questioning ICF. The Commission may change, alter, or otherwise do whatever is necessary to conduct the Individual Meetings in an orderly fashion. Only the Party scheduled to meet at the Individual Meeting at the time specified in paragraph 1. above shall be allowed to ask questions of ICF at such Individual Meeting.
  4. The Parties agree that the scope of these meetings will be limited to asking ICF questions on the Report (including any assumptions, data, and other information utilized by ICF in preparing the Report) and ICF's responses thereto.
  5. The Parties agree that to the extent that confidential information is covered under Protective Order No. 21669, the Parties do not waive such confidentiality and in no event shall these meetings be considered a waiver of such confidentiality. In addition, the Parties agree that, to the maximum extent provided by law and under Protective Order No. 21699, these meetings with ICF shall also be subject to the confidentiality protection of Protective Order No. 21699 and that the Parties agree to abide by Protective Order No. 21699.
  6. The Parties agree that they have all had adequate and appropriate notice and opportunity to participate in each and every one of the Individual Meetings but in light of the antitrust, Sarbanes-Oxley, confidentiality and other concerns briefly expressed above, the Parties agree to waive all ex-parte rules with respect to these

ICF meetings including, without limitation, Section 6-61-29 of the Rules of Practice and Procedure Before the Public Utilities Commission, Hawaii Administrative Rules, Title 6, Chapter 61.

The Parties would be pleased to answer any questions that the Commission may have.

Thank you for your time and consideration in this matter.

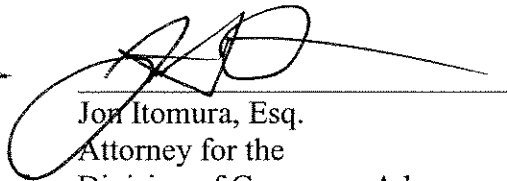
Sincerely,

Hawaii Petroleum Marketers Association



Kelly G. Laporte, Esq.  
Marc E. Rousseau, Esq.  
Attorneys for  
Hawaii Petroleum Marketers Association

Division of Consumer Advocacy



Jon Itomura, Esq.  
Attorney for the  
Division of Consumer Advocacy  
Department of Commerce and Consumer  
Affairs

Chevron U.S.A., Inc.



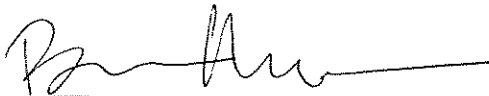
Michael Lau, Esq.  
Kent Morihara, Esq.  
Attorneys for  
Chevron U.S.A., Inc.

Tesoro Hawaii Corporation



Craig Nakanishi, Esq.  
Shah Bento, Esq.  
Attorneys for  
Tesoro Hawaii Corporation

Shell Oil Company



Clifford Higa, Esq.  
Bruce Nakamura, Esq.  
Attorneys for  
Shell Oil Company